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| Title | Rule on Conducting Discovery by Electronic Means: Oral Deposition by Telephone, Videoconference, or Other Remote Electronic Means |
| Summary | A new rule would be adopted governing the conduct of discovery by remote electronic means. The rule prescribes the notice to be given that a party intends to take an oral deposition by telephone, videoconference, or other remote electronic means. The rule indicates which parties must make the arrangements for the deposition and pay its expenses. And it contains a provision on participation in the deposition. |
| Source | Civil and Small Claims Advisory Committee |
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| Discussion | <p>Last year, the Judicial Council sponsored legislation on electronic discovery. This legislation was enacted as part of Assembly Bill 223 (Frommer) and became effective January 1, 2002.</p> <p>AB 233 amended section 2025 of the Code of Civil Procedure to include the following provision:</p> <p style="padding-left: 40px;">A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means. The court may expressly provide that a nonparty deponent may appear at his or her deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer. <i>The procedures to implement this section shall be established by court order in the specific action proceeding or by the California Rules of Court.</i></p> <p>(Code Civ. Proc., § 2025(h)(3) (italics added).)</p> <p>Proposed new rule 333 would implement section 2025. The rule has three subdivisions. The first prescribes the proper notice to be given that a deposition will be taken by telephone, videoconference, or other electronic means. It indicates that the party taking a deposition</p> |

electronically must give notice of this intention on or with the notice of deposition or subpoena. The second subdivision prescribes the arrangements for electronic depositions and the payment of expenses. It provides that the party noticing the deposition must make the arrangements. Each party must pay the expenses incurred by it or allocated to it. The third subdivision governs participation of parties in depositions taken by remote electronic means. It provides that any party may appear and participate in a deposition taken electronically in the same manner as if the party were physically present. The party must give notice of such an appearance at least three days before the deposition.

Attachments

Rule 333 would be added to the California Rules of Court, effective January 1, 2003, to read:

Rule 333. Oral deposition by telephone, videoconference, or other remote electronic means

- (a) **[Notice and taking of the deposition]** A party may take an oral deposition by telephone, videoconference, or other remote electronic means if the party gives notice of intent to do so in or with the notice of deposition or the subpoena. The deponent and the person administering the oath must be present in person at the deposition, and the deposition must be conducted as if all parties were present at the location of the deponent and the person administering the oath. Any party may be personally present at the deposition without giving prior notice.
- (b) **[Arrangements and payment of expenses]** The party noticing the deposition must make any necessary arrangements for any other party to participate in the deposition in the same or equivalent manner. Each party must pay all expenses incurred by it or properly allocated to it in making the appearance by videoconference, telephone, or other remote electronic means.
- (c) **[Participation in the deposition]** Any party may appear and participate in a deposition taken by telephone, videoconference, or other remote electronic means in the same manner as if the party were physically present at the deposition. The party must give notice of such appearance by facsimile or personal delivery at least three days before the deposition. The party so appearing must make any necessary arrangements and pay all expenses incurred for the appearance.